

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

2012-1567, -1568, -1569, -1570

TEVA PHARMACEUTICALS USA, INC.,
TEVA PHARMACETICAL INDUSTRIES, LTD.,
TEVA NEUROSCIENCE, INC., and
YEDA RESEARCH AND DEVELOPMENT CO., LTD.

Plaintiffs-Appellees,

v.

SANDOZ, INC and MOMENTA PHARMACEUTICALS, INC.

Defendants-Appellants,

and

MYLAN PHARMACEUTICALS INC., MYLAN, INC.
and NATCO PHARMA, LTD.,

Defendants-Appellants,

and

SANDOZ INTERNATIONAL GMBH and NOVARTIS AG,

Defendants.

Appeals from the United States District Court for the Southern District
of New York in consolidated case nos. 08-CV-7611 and 09-CV-8824,
Judge Barbara S. Jones.

**PLAINTIFFS-APPELLEES' MOTION FOR LEAVE TO FILE
APPELLATE BRIEF IN EXCESS OF WORD LIMIT IN RESPONSE TO
APPELLANTS' MULTIPLE MERITS SUBMISSIONS**

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and Development Co., Ltd.*

Pursuant to Federal Circuit Rule 28(c), Plaintiffs-Appellees Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries, Ltd., Teva Neuroscience, Inc., and Yeda Research and Development Co., Ltd. (collectively “Teva”) respectfully move this Court for leave to file an extended brief of no more than 26,000 words in response to Appellants’ multiple merits submissions. Appellants Sandoz, Inc. and Momenta Pharmaceuticals, Inc. (collectively “Sandoz”) and Appellants Mylan Pharmaceuticals, Inc., Mylan Inc., and Natco Pharma Ltd. (collectively “Mylan” and together with Sandoz, “Appellants”) have indicated that they take no position on Teva’s motion and that they will not file an opposition to Teva’s motion.

Good cause exists for Teva’s request for leave to file an extended brief pursuant to Fed. Cir. R. 28. Sandoz and Mylan have filed separate, full-length principal briefs focusing on entirely distinct legal claims and with little or no overlap in background facts or legal principles. In total, Appellants certify to using over 26,100 words for their principal briefing.¹ In order to respond to each Defendant’s brief in full, Teva seeks leave to file a single appellate brief of no more than 26,000 words. If limited to the 14,000 words provided by Fed. R. App. P. 32, Teva would have only little over half the total words used by Appellants,

¹ Sandoz reports its brief to be 13,957 words (*see* Dkt. No. 57 at “Certificate of Compliance with Rule 32(a)”), and Mylan reports its brief to be 12,146 words (*see* Dkt. No. 60 at 57.)

with which to reply to Appellants' distinct issues and arguments raised on appeal. Therefore, Teva will suffer unfair prejudice if the Court does not grant its motion for leave. In light of the above, Teva submits that allowing it to file an appellate brief of no more than 26,000 words is both reasonable and appropriate, and would not unfairly prejudice Appellants.

Pursuant to Fed. Cir. R. 27(a)(5), Teva's counsel discussed its request with counsel for Sandoz and Mylan. Sandoz and Mylan take no position on Teva's request and will not file an opposition brief.

For the foregoing reasons, Teva respectfully requests that this Court grant its motion for leave to file an appellate brief of no more than 26,000 words in response to Appellants' multiple merits submissions.

Dated: November 13, 2012

Respectfully submitted,

Teva Pharmaceuticals USA, Inc., Teva
Pharmaceutical Industries Ltd., Teva
Neuroscience, Inc. and Yeda Research and
Development Co., Ltd

By their attorneys,

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PROOF OF SERVICE

I certify that on November 13, 2012, (1) Plaintiffs-Appellees' Motion for Leave to File Appellate Brief in Excess of Word Limit in Response to Appellants' Multiple Merits Submissions; (2) Certificate of Interest; and (3) Proof of Service, were served upon the following counsel of record for Appellants via CM/ECF and electronic mail:

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/s/ Elizabeth J. Holland
Elizabeth J. Holland

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

**TEVA PHARMACEUTICALS USA V SANDOZ INC.,
2012-1567, -1568, -1569, -1570**

CERTIFICATE OF INTEREST

Counsel for Plaintiffs-Appellees Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Teva Neuroscience, Inc., and Yeda Research and Development Co. Ltd., certifies the following:

1. The full name of every party or *amicus curiae* represented by me is:

Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Teva Neuroscience, Inc., and Yeda Research and Development Co. Ltd.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

See response to number 1.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or *amicus curiae* represented by me are:

(a) The parent companies of Teva Pharmaceuticals USA, Inc. are: Orvet UK Unlimited, Teva Pharmaceutical Holdings Cooperative U.A., Ivax LLC (f/k/a IVAX Corporation), Teva Pharmaceuticals Europe, B.V., and Teva Pharmaceutical Industries Ltd.; Teva Pharmaceutical Industries Ltd. is the only publicly traded company that owns 10% or more of Teva Pharmaceuticals USA, Inc.

(b) Teva Pharmaceutical Industries Ltd. has no parent company, and no publicly traded company owns 10% or more of Teva Pharmaceutical Industries Ltd.

(c) The parent companies of Teva Neuroscience, Inc. are: IVAX Corporation, Teva Pharmaceuticals USA, Inc., Orvet UK Unlimited, Teva Pharmaceutical Holdings Cooperative U.A., Ivax LLC (f/k/a IVAX Corporation), Teva Pharmaceuticals Europe, B.V., and Teva Pharmaceutical Industries Ltd.; Teva Pharmaceutical Industries Ltd. is the only publicly traded company that owns 10% or more of Teva Neuroscience, Inc.

(d) Yeda Research and Development Co. Ltd. is wholly owned by Yeda Trust; no publicly traded company owns 10% or more of Yeda Research and Development Co. Ltd.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

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August 16, 2012

Date

/s/ William G. James, II

William G. James, II

TEVA PHARMACEUTICALS USA V SANDOZ INC.

2012-1567, -1568, -1569, -1570

CERTIFICATE OF SERVICE

I hereby certify that copies of the *Certificate of Interest* were served on August 16, 2012, by electronic means, via the Court's CM/ECF system, and by courier on the following attorneys:

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